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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No.....

STATE OF CALIFORNIA, and
BEN H. BROWN, Domiciliary Administrator,
Petitioners,

vs.

MICHIGAN STATE BOARD OF ESCHEATS, and
EDWARD J. O'DONNELL, Ancillary Administrator,
Respondents

—

In the Matter of the Estate of Max Rapoport also known as Max Rappaport, Deceased

---

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioners, the State of California, and Ben H. Brown, domiciliary administrator of the Estate of Max Rapoport, Deceased, respectfully show:

SUMMARY STATEMENT OF THE CASE

The facts in this case are undisputed. It is a contest between Michigan and California over the right to take by escheat certain intangible personal property of Max Rapoport, who at the time of his death and for many years prior thereto, was domiciled in and was a resident of the City of Los Angeles, State of California. He died in Los Angeles, on July 25, 1943, leaving no will and no heirs so far as is known to the parties hereto (R. 16).

Ben H. Brown, Public Administrator of the County of Los Angeles, California, was appointed administrator of the estate by the Superior Court of the State of California in and for the County of Los Angeles (R. 8) and, discovering that decedent had an account in a Detroit bank and had deposited with such Detroit bank certain stocks and bonds for safekeeping (R. 24), asked the Public Administrator of Wayne County, Michigan, to apply for ancillary administration, which was done (R. 3).

Petition for assignment of residue to the domiciliary administrator was filed in the Michigan Probate Court (R. 6) and the State of California also petitioned for assignment to it or to the domiciliary administrator (R. 13). The Attorney General of the State of Michigan filed objections to the granting of these petitions (R. 14) and the Probate Court ordered the residue assigned to the Michigan State Board of Escheats (R. 18). The Wayne Circuit Court on appeal affirmed the order of the Probate Court, and the Supreme Court of Michigan, the highest Court of the State, affirmed the judgments of the courts below (R. 36).

OPINIONS BELOW

The Probate Court of Wayne County, Michigan, on June 21, 1945, without a written opinion, ordered the decedent's property be turned over to the Michigan State Board of Escheats (R. 17-18).

The Circuit Court for the County of Wayne, on January 18, 1946, filed a written opinion affirming the order of the Probate Court (R. 36).

The Supreme Court of the State of Michigan, on April 8, 1947, filed its written opinion affirming the judgment of the Circuit Court (R. 46-55), which is reported in 317 Mich. 291.

JURISDICTION

The jurisdiction of this court is invoked under Article III, Section 2 of the Constitution of the United States, to determine a controversy between the State of Michigan and the State of California.

Article III, Section 2, of the Constitution reads:

> "The Judicial Power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;— * * *; to controversies between two or more states;— * * *."

Jurisdiction is also invoked under Section 237 of the Judicial Code, as amended (U. S. C. Title 28, Sec. 344), because in this case there is drawn in question the validity of a statute of the State of Michigan on the ground of its being repugnant to the Constitution of the United States and the decision of the Michigan Supreme Court, the high-

est Court of the State in which a decision in the suit could be had, decided in favor of its validity.

The statutes involved are the Michigan statutes on escheats. In its opinion the Michigan Supreme Court sets out the applicable sections, as follows (R. 54-55):

> "The Michigan escheat law is a part of the law of intestate succession. Chapter 2, sec. 50, of the probate code (Act No. 288, Pub. Acts 1939, Stat. Ann. 1943 Rev., sec. 27.3178 (120)), provides that
>
> > 'When any person shall die intestate * * * if such deceased person, at the time of his death, resided in any other state or country, *leaving estate to be administered in this state,* administration thereof shall be granted by the probate court of any county in which there shall be estate to be administered. * * *' "

Sections 13456, 13457, 3 Comp. Laws 1929 (Stat. Ann. secs. 26.1022, 26.1023), designate the duty of the attorney general and sec. 13469, 3 Comp. Laws 1929 (Stat. Ann. sec. 26.1043), provides:

> "'* * * the attorney general shall see that all the property of whatever name or nature remaining in such estate after due administration thereon is turned over to the care and custody of the state board of escheats and to their successors in office, who shall take the same as trustee thereof * * *.' "

The Supreme Court, earlier in the opinion, quotes from the opinion of the Circuit Judge, who relies on sections 4 & 5 of Michigan Statutes Annotated 27.3178 (163) relating to descent and distribution of intestate estates, which provide that personal property of a decedent not otherwise disposed of shall be distributed the same as real estate, and Michigan Statutes Annotated 27.3178 (150), sec. 5, which provides for the escheat of real estate where decedent left no kindred (R. 47). The above are sections

93 & 80, Chap. II, Act 288 of Public Acts of 1939, and the pertinent parts are quoted in par. 18 of the opinion (R. 47).

Also relied upon is Michigan Statutes Annotated 26.-1024 (2), as amended by Act 170 of Public Acts, 1941, which defines the word "escheated" as covering and including all property of whatever nature (R. 48, par. 21).

The decision of the Michigan Supreme Court in this case was that such statutes changed the general rule of law that intangible personal property is located at the domicile of its owner and held that the Michigan statutes require that intangible personal property of a non-resident be escheated to Michigan (R. 55).

The statutes so construed deny to Ben H. Brown, domiciliary administrator, and a citizen of California, the equal protection of the laws and deprive him of property, title to which is vested in him as administrator, without due process of law, in violation of the XIV Amendment to the Constitution of the United States.

The Federal question first appears in the record of this case when the Circuit Court Judge ruled in his written opinion (R. 31, par 19) that the Michigan statutes require that the intangible property of this decedent be escheated to the State of Michigan instead of to the State of his domicile. As the case originated in Probate Court there are no pleadings and therefore no record of the legal questions raised there or in the Circuit Court.

Petitioners presented the Federal question to the Michigan Supreme Court in their brief, under the following heading:

"Statement of Questions Involved"

"3. Has Michigan power under the Constitution to take by escheat intangible personal property of a non-resident." (R. 42.)

We then argued that question in our brief to the Michigan Supreme Court, citing Federal cases, *Baldwin v. Missouri*, 281 U. S. 586, and *Farmers Loan & Trust Co. v. Minnesota*, 280 U. S. 204 (R. 45), both of which held that defendant States had no power under the Constitution to tax intangible property of non-residents because such property was not within the jurisdiction of said States. The Michigan Supreme Court overruled this contention by affirming the judgment escheating the property to Michigan as being required by the Michigan statutes and thereby necessarily determined that Michigan had the power to enact such statutes.

The judgment sought to be reviewed was entered in the Supreme Court of Michigan, on April 8th, 1947. This petition was filed July 5th, 1947.

QUESTIONS PRESENTED

1. Does intangible personal property owned by a resident of California have its legal situs in Michigan solely because the evidence of such property, bank account, stock certificates and bonds, are deposited in a Michigan bank for safekeeping?

2. Has Michigan the power to enact a statute, the effect of which is to take property from a citizen of California and give it to the State of Michigan?

3. Has Michigan power under the Constitution to take by escheat intangible personal property of a non-resident deposited in a Michigan bank for safekeeping?

REASONS RELIED ON FOR ALLOWANCE OF WRIT

1. This case presents a controversy between two States arising from a factual situation which is constantly recurring. We believe it to be the first attempt by any State to change the universally accepted rule of law that a decedent's intangible personal property shall be disposed of in accordance with the law of his domicile.

2. The issues in this case are of universal and public importance, but have never been decided by this Court. A decision of the Supreme Court of the United States is necessary to effect uniformity between the States and this is the only forum where a uniform rule can be established.

3. The ruling of the Michigan Supreme Court in this case is in direct conflict with the ruling of the Washington Supreme Court in the case of *In re Lyons Estate,* 175 Wash. 115, and these are the only decisions by State Courts of last resort on the questions here presented.

4. A Federal question of substance which has not heretofore been determined by this Court is presented by the decision of the Michigan Supreme Court that Michigan, by merely enacting a statute, can take from California property which, except for such statute, would belong to California.

5. This attempt by the State of Michigan to exercise jurisdiction over property not located within her borders and not owned by her citizens is a violation of the due process clause of the XIV Amendment and sets a dangerous precedent.

Wherefore, petitioners pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of

Michigan, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be named therein, a full and complete transcript of the record of the proceedings in case No. 43,342, entitled on its docket, "In the Matter of the Estate of Max Rapoport, also known as Max Rappaport, Deceased.—Ben H. Brown, domiciliary administrator, and State of California, Appellants, v. Edward J. O'Donnell, ancillary administrator, and Michigan State Board of Escheats, Appellees," and that the judgment of said Supreme Court of the State of Michigan in said case may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet.

And your Petitioners will ever pray.

FRED N. HOWSER,
Attorney General of California,
Sacramento, California.

EVERETT W. MATTOON,
Deputy Attorney General of California,
Los Angles 12, California.

PATRICK S. NERTNEY,
Attorney for State of California,
3729 Barlum Tower,
Detroit 26, Michigan.

LLOYD T. CHOCKLEY,
Attorney for Ben H. Brown,
Domiciliary Administrator,
1510 Ford Building,
Detroit 26, Michigan.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

OPINIONS BELOW

Opinions below have been described in the Petition for Writ of Certiorari under the caption "Opinions Below" (page 3 *ante*).

II.

JURISDICTION

The statement as to jurisdiction has heretofore been set forth in the Petition for Writ of Certiorari under the caption "Jurisdiction" (pages 3-6 *ante*).

III.

STATEMENT OF THE CASE

The facts have been adequately stated in the Petition for Writ of Certiorari under the caption "Summary Statement of the Case" (page 2 *ante*).

IV.

SPECIFICATIONS OF ERROR

1. The Supreme Court of Michigan erred in holding that Michigan has jurisdiction over property not located within her borders and not owned by her citizens.

2. The Supreme Court of Michigan erred in holding that Michigan has the power to enact a statute the effect of which is to take property from a citizen of California and give it to the State of Michigan.

3. The Supreme Court of Michigan erred in holding that Michigan by legislative enactment can change the generally recognized law of situs of domicile and thereby deprive California of the right to take by escheat the intangible personal property of a resident of California which has no business situs in Michigan.

4. The Michigan Supreme Court erred in not reversing the judgment of the Michigan Circuit Court on the merits of the controversy.

V.

SUMMARY OF ARGUMENT

(A) The rule of situs of intangible personal property is the domicile of the owner.

(B) Legislation by a state contrary to the established rule that situs of intangible assets is the domicile of the owner (except in some cases of business situs) is an attempt to take property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

VI.

ARGUMENT

A.

THE RULE OF SITUS OF INTANGIBLE PERSONAL PROPERTY IS THE DOMICILE OF THE OWNER

The Michigan Supreme Court in its opinion clearly states the position of the parties and the legal questions presented for decision as follows:

> "The domiciliary administrator and the State of California appeal and urge that intangible personal property owned by a resident of California has its legal situs in that State, even though the bank account, stock certificates and bonds are deposited in a Detroit bank for safe keeping; and that *the State of Michigan has no power* to take this property by escheat.
>
> The attorney general, on behalf of the Michigan State Board of Escheats, urges that all of these assets, *being situated in the State of Michigan* at the time of the death of Mr. Rapaport, belong to and should remain with the State of Michigan under the statutory provisions relating to descent and distribution of personal property and to escheats; or at least such intangibles issued by Michigan corporations escheat to the State of Michigan." (R. 47.) (Emphasis supplied.)

As the Attorney General of Michigan takes the position that these assets are "situated in the State of Michigan" and as their "situs" is the fundamental question in this case, we shall cite a few of the authorities.

Petitioners submit that on the question of location of intangible property the authorities are in complete accord. The established and universally accepted rule is that in-

tangible property (excepting only that having a business situs), follows the domicile of the owner.

The Michigan Supreme Court in its opinion recognizes this rule, saying:

> "It should be noted that all of the assets involved in the case at bar are within the intangible personal property class, see *In re Dodge Brothers,* 241 Mich. 665; and that the generally accepted rule, the situs of intangible assets is the domicile of the owner unless fixed by some positive law, applies to the descent and distribution of personal property." (R. 53.)

In some cases, the general rule of situs of domicile, is qualified by the statement, "Unless changed by positive law," or words of like import. That is because in all such cases "business situs" was urged as the basis justifying taxation apart from the domiciliary situs. The case at bar, however, lacks any color of business situs, and we have found no case which holds that intangibles of non-residents are taxable in the absence of business situs.

> "We have referred to the maxim—*Mobilia sequuntur personam.* That maxim, universally applied in the jurisdictions of all civilized nations, is that the personal estate of a decedent, wherever it may in fact be located, is, for the purposes of succession and distribution, deemed to have no other locality than the domicile of the decedent. As a general rule the domicile of the decedent draws to it in contemplation of law all the property of the decedent no matter where its actual situs may be at the time of his death, and the distribution of it is governed and controlled by the laws of succession existing at the place of the domicine of the decedent."

Estate of Hodges, 170 Cal. 492, 495.

"Intangible movables, such as debts and other choses in action ordinarily follow the person—*mobilia sequuntur personam*—and have their situs at the domicile of the owner."

15 C. J. S., 928, Sec. 18 c.

"The succession to, and the disposition and distribution of, personal or movable property, wherever situated, as a general rule is governed by the *lex domicilli* of the owner or intestate at the time of his death, without regard to the location of the property or the place of the death, unless the *lex domicilli* contravenes some rule of public policy."

26 C. J. S., 1001, Sec. 5.

"Assets remaining in the hands of an ancillary representative after paying the claims of local creditors will, in the absence of special circumstances making a local distribution proper, see *infra* sec. 1006, ordinarily be transferred to the domicile of the decedent for distribution. The distribution of the personal property, wherever made, must be according to the law of decedent's domicile, see Descent and Distribution, sec. 5 (quoted above), and comity requires that it should be accorded to that jurisdiction."

34 C. J. S., 1253, Sec. 1005.

"All the property there can be in the nature of things in debts of Corporations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations from numerous adjudications, but no number of authorities, and no forms of expression could add anything to its obvious truth, which is recognized upon its simple statement."

Railroad Co. v. Pennsylvania, 82 U. S. 300, 320.

It is important to note Michigan's adherence to the rule. See *In re Dodge Brothers,* 241 Mich. 665, at page 668, wherein the Michigan Supreme Court said, in reference to the situs of intangible personal property, as follows:

> "In this jurisdiction the court has adhered to the common-law rule of situs of domicile."

The Supreme Court of the State of Washington, in passing upon a case involving the same legal questions and substantially the same facts as are present in the case at bar, said:

> "The fundamental principle that the law of the domicile governs the distribution of the assets of a decedent is established beyond question.
>
> 'In the administration and settlement of decedents estates personal property is distributed by the law of the domicile of the decedent at the time of his death. This rule has been universal for so long a time that it may now be said to be a part of the *jus gentium,* * * * *5 R. C. L., 929.*' "

Later, at page 120 of the opinion, the Supreme Court of Washington further said:

> "The right to escheat property and the right to levy a tax are both attributes of sovereignty, one as much as the other, and the broad language used by the Courts in discussing the question cannot logically be limited to the question of taxation alone. * * * The Supreme Court of the United States, in common with the State Courts, has repeatedly and consistently held that the situs of intangible property is at all times at the domicile of the owner. *Railroad Co. v. Pennsylvania,* 82 U. S. 300, 320; *New Orleans v. Stempel,* 175 U. S. 309."

In conclusion, the Washington Court said:

> "The debt owing by the Seattle bank was a credit belonging to the decedent, Lyons, before and at the

time of his death; and, applying the rule, *Mobilia sequuntur personam*, the situs of this property was at the domicile of its owner, and therefore it was not property within this State at the time of his death and not subject to escheat under our statute."

In re Lyons Estate, 175 Wash. 115; 26 Pac. 2nd 615.

B.

LEGISLATION BY A STATE CONTRARY TO THE ESTABLISHED RULE THAT SITUS OF INTANGIBLE ASSETS IS THE DOMICILE OF THE OWNER (EXCEPT IN SOME CASES OF BUSINESS SITUS) IS AN ATTEMPT TO TAKE PROPERTY WITHOUT DUE PROCESS OF LAW, IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES

The Michigan Supreme Court disposed of this case in the following language:

> "It should be noted that when the escheat law was enacted the doctrine of situs of domicile was in existence in Michigan. We presume that it was the intention of the legislature by the enactment of the escheat law to overrule the doctrine of situs of domicile insofar as escheated estates are concerned. In our opinion the assets involved in the case at bar escheat to the State of Michigan under and by virtue of the Michigan escheat law."

As the Michigan Court rests its decision entirely on the fact that the escheat statutes overrule the generally accepted law of situs of domicile under which the property would go to Ben H. Brown, domiciliary administrator and from him to the State of California, the question squarely presented is the power of Michigan to enact such a statute.

We urge that the decision is wrong on both principle and precedent.

On principle it seems wrong that Michigan by merely enacting a statute can take unto herself property which, except for the statute, would go to Ben H. Brown, administrator, a citizen of California. Clearly there is vested in him as administrator, title to his decedent's property and such taking by statute deprives him of his property without due process of law; clearly when he comes into the Michigan Courts and asks that these stocks and bonds be delivered to him and the Court holds that Michigan by statute has overruled the generally accepted law, and will keep the property herself, he is denied the equal protection of the laws which is guaranteed to him by the XIV Amendment.

If we consider the rights of the real party in interest, the State of California, it is no less shocking to hold that Michigan, by enacting a statute, can change a generally accepted rule of law and thereby take California's property. Mutual respect and good feeling between the States cannot be attained by such a rule of grab.

On precedent the Michigan decision is equally wrong. This Court has repeatedly held that the States have no power to tax the intangible property of non-residents.

> "A tax upon intangibles which have come to rest in a State other than the domicile of their owner, and are there only for safekeeping, even though placed there in an attempt to escape taxation, is invalid. *Buck v. Beach,* 206 U. S. 392."
>
> "State taxation of anything not within its jurisdiction is in violation of the 14th Amendment."
>
> *Farmers Loan & Trust Co. v. Minnesota,* 280 U. S. 204—3rd syllabus.

The United States Supreme Court considered this question in the case of *Baldwin v. Missouri,* 281 U. S. 586; 74 L. ed. 1056. In that case, the Supreme Court of Missouri up-

held an inheritance tax against the estate of a resident of Illinois who died testate, leaving bank deposits, bonds and notes, which were physically in the State of Missouri. The claim of the State of Missouri for inheritance taxes was resisted upon the grounds that the intangible property was not within the jurisdiction of Missouri, and to enforce such demand would violate the due process clause of the Fourteenth Amendment. Mr. Justice McReynolds, in the opinion, says:

> "The challenged judgment rests upon the broad theory that a state may lay succession or inheritance taxes measured by the value of any deposits in local banks passing from a non-resident decedent; also upon the value of bonds issued by the United States and promissory notes executed by individual citizens of the state when devised by such non-resident if these bonds or notes happen to be found within the confines of the state when death occurs. * * * The theory upon which the court below proceeded is untenable and its judgment must be reversed.
>
> Ordinarily, bank deposits are mere credits and for purposes of *ad valorem* taxation have situs at the domicile of the creditor only. The same general rule applies to negotiable bonds and notes whether secured by liens on real estate or otherwise. * * *
>
> So far as disclosed by the record the situs of the credit was in Illinois where the depositor had her domicile. There the property interest in the credit passed under her will; and there the transfer was actually taxed. This passing was properly taxable at that place and not otherwhere.
>
> The bonds and notes, although physically within Missouri, under our former opinions were choses in action with situs at the domicile of the creditor. At that point they too passed from the dead to the living and there this transfer was actually taxed. As they were not within Missouri for taxation purposes the transfer was not subject to her power."

As the power to tax and the power to escheat are both attributes of sovereignty, and if, as seems clear from the above, the State has not the power to take a part of this property by taxation, then logically it has not the power to take all of it by escheat.

We submit in conclusion that, in view of the rule of situs of domicile, as applied consistently by this Court, in reference to attempted taxation of intangibles, and particularly in view of the application of the rule to intangibles as found in the opinion of this Court in *Baldwin v. Missouri*, that the judgment of the Michigan Supreme Court violates the due process clause and the equal protection clause of the Fourteenth Amendment of the Constitution of the United States, to the detriment of Ben H. Brown, a citizen of California, and the State of California, and therefore, it is respectfully submitted that the Writ of Certiorari should be granted.

Respectfully submitted,

FRED N. HOWSER,
Attorney General of California,
Sacramento, California.

EVERETT W. MATTOON,
Deputy Attorney General of California,
Los Angeles 12, California.

PATRICK S. NERTNEY,
Attorney for State of California,
3729 Barlum Tower,
Detroit 26, Michigan.

LLOYD T. CHOCKLEY,
Attorney for Ben H. Brown,
Domiciliary Administrator,
1510 Ford Building,
Detroit 26, Michigan.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1947

No. 175

State of California and Ben H. Brown Domiciliary Administrator, Petitioners, v Michigan State Board of Escheats, and Edward J. O'Donnell, Ancillary Administrator. In the Matter of the Estate of Max Rapoport also known as Max Rappaport, Deceased.	On application for certiorari to the Supreme Court of the State of Michigan.

Brief Opposing Petition for Certiorari

Eugene F. Black
Attorney General of Michigan

Edmund E. Shepherd
Solicitor General of the State of Michigan

Daniel J. O'Hara
Assistant Attorney General of the State of Michigan
Counsel for Respondents

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1947

No. 175

State of California and Ben H. Brown Domiciliary Administrator, **Petitioners,** **v** **Michigan State Board of Escheats, and Edward J. O'Donnell, Ancillary Administrator.** **In the Matter of the Estate of Max Rapoport also known as Max Rappaport, Deceased.**	**On application for certiorari to the Supreme Court of the State of Michigan.**

Brief Opposing Petition for Certiorari

I

Opinion of the Court Below.

The opinion of the court below is correctly reported in 317 Mich. 291, as stated on p. 3 of the Petition.

II

Counter-Statement of the Case.

(Figures in parentheses refer to pages of the printed record unless the context clearly indicates otherwise.)

Not even a hint that a federal question is raised appears in the appeal of Ben H. Brown, domiciliary administrator of decedent, and State of California, appellants, to the circuit court of Wayne County, Michigan, from the Probate Court of the County of Wayne, for the five reasons set forth therein. (19)

And further in the reasons and grounds of appeal from the circuit court of the County of Wayne, to the Supreme Court of Michigan (38) and which is required by Michigan Court Rules, Rule 66, Sec. 2, which provides in part:

> " • • • and the proposed bill of exceptions or settled case, together with the statement of reasons and grounds of appeal and the notice for settlement, shall be served on the appellee at least 4 days before the time for such settlement • • • ,"

is there a clear cut statement that a federal question is raised.

Section 3 of said Rule 66 provides:

> "Reasons and grounds of appeal shall be stated in the form heretofore employed in assignments of error, but no statement shall be deemed insufficient if it reasonably informs of the error relied upon. No bill of exceptions or settled case shall be signed unless accompanied by such statement of reasons and grounds of appeal, and no errors shall be considered by the Supreme Court that are not included in such statement."

We note that Brief for Domiciliary Administrator and State of California, Appellants in the lower court is made a part of the Record in the case at bar. (42)

As we view it this avails nothing. As said in part in Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States, Sec. 74, p. 125:

> "It is an established rule that briefs filed in the state courts form no part of the state court record for the purpose of Supreme Court review; and ordinarily they cannot be relied upon to establish that a federal question was raised, even if they are incorporated into the record sent to the Supreme Court * * * ."

III

Jurisdiction.

Counsel for petitioners invoke the jurisdiction of this Court under Article III, Sec. 2 of the Constitution of the United States and under Section 237 of the Judicial Code, as amended (USC Title 28 Sec. 344) because in this case there is drawn in question the validity of a statute of the State of Michigan on the ground of its being repugnant to the Constitution of the United States and the decision of the Michigan Supreme Court, the highest Court of the State in which a decision in the suit could be had, decided in favor of its validity.

The respondents respectfully suggests that jurisdiction should not be assumed by this Court, since the state court did not decide a federal question of substance (Court Rule 38, par. 5 (a)). The questions now presented were not raised in their federal aspect in the trial court (See claim of appeal of Ben H. Brown, domiciliary administrator of decedent, and State of California from the Probate Court of Wayne County to the Circuit Court of Wayne County for the reasons therein set for and to which the appeal shall be limited

(19), and Reasons and Grounds of Appeal from the circuit court of the County of Wayne, Michigan, to the Supreme Court of the State of Michigan (38) and required by Michigan Court Rules, Rule 66, Sections 2 and 3).

Specifically answering the statement of petitioners that they presented the Federal question to the Michigan Supreme Court in their brief, page 5, under the following heading:

"Statement of Questions Involved"

"3. Has Michigan power under the Constitution to take by escheat intangible personal property of a non-resident (42)"

and bearing in mind that briefs filed in the state courts form no part of the state court record for the purpose of Supreme Court review, Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States, Sec. 74, p. 125, supra, the due process clause of the Michigan State Constitution of 1908, Sec. 16, Art. 11, reads as follows:

"No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law,"

this does not in our view properly raise a federal question. As said in part in Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States, Sec. 81, p. 139:

"Where the state constitution contains a due process clause, a claim in the record that 'due process' is violated, without specific reference to the federal Constitution, will be deeemed to refer solely to the state constitution and if the objection made is that the statute of the state is 'unconstitutional,' 'unconstitutional and

> void,' denies 'constitutional rights,' or the like, this is regarded as referring only to the power of the state legislature under the state constitution. • • • "

Counsel for petitioners then say in their brief p. 6, that we then argued that question in our brief to the Michigan Supreme Court, citing federal cases. In this regard Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States, sec. 81, p. 140, says:

> "The mere fact that decisions of the Supreme Court are cited and relied upon in support of an argument advanced in the state court does not, of itself, suffice to show that a federal question was raised. Nor is a federal question deemed to have been sufficiently passed upon by the state court to sustain the jurisdiction of the Supreme Court, where the opinion of the state court, after setting forth the state rule, adds: 'Such principle is fair and just and complies with the construction by the Federal courts of the 'due process' clause of the Fourteenth Amendment'—citing decisions of the Supreme Court."

IV

Respondents' Suggestions as to why jurisdiction should not be assumed.

We disagree with the statement of counsel for petitioners on p. 7 of their brief that the issues in the case at bar have never been decided by this Court.

There is no substantial federal question involved in the case at bar and this is a jurisdictional prerequisite. As stated in Robertson and Kirkham, Jurisdiction of the

Supreme Court of the United States, sec. 22, p. 48, that a record from the state court which will support the jurisdiction of the Supreme Court must show:

(4) That the case presents a substantial federal question;

(5) That the federal question sought to be reviewed was properly raised and preserved in the state courts; and

(6) That the decision of the highest court of the state does not rest upon a state ground which independently and adequately supports the judgment or decree.

Counsel for petitioners complain on p. 7 of their brief that the lower court declined to follow the ruling of the Washington Supreme Court in the case of *In re Lyons Estate,* 175 Wash. 115, relied upon by appellants in the court below, petitioners here, and referred to in the decision of the lower court in 317 Mich. 291, 296. The lower court also quotes with approval on p. 302 of the decision a criticism of the holding in the case of *Re Lyons' Estate,* supra, in 2 Beale, Conflict of Laws, p. 1039, Sec. 309.1.

We have then, as we view it, a decision in the field of the conflict of laws. This Court has said that federal courts must follow the law of the state as to conflict of laws,

Griffin v *McCoach,* 313 US 498, 134 ALR 1462;

Klaxon Co. v *Stentor Electric Mfg. Co.,* 313 US 487.

And the State of California being a litigant in the case at bar the language of Sec. 273, Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States, p. 505, is apt:

> "But the interests of the state, broad as they are, do not authorize it to invoke the decision of the Su-

preme Court upon abstract questions of power as between state and nation, or of rights as between states, without showing prejudicial injury to its quasi-sovereign rights, its proprietary rights, or its rights of physical dominion. Its standing, as representative of its citizens, to challenge the action of other states and their citizens is a limited one * * *."

The power of the legislature to render property of the character here involved subject to escheat in favor of the State is clear,

In re Escheat of Moneys in Custody of United States Treasury, 322 Pa. 260, Id. 326 Pa. 260, affirmed *United States* v *Klein,* 303 U.S. 276;

Cunnius v *Reading School District,* 206 Pa. 469, 471, affirmed 198 U.S. 458;

Security Savings Bank v *State of California,* 263 U.S. 282, 285, 286, 31 A. L. R. 391.

A legislative provision for escheat is a valid exercise of the police power of the state,

Cunnius v *Reading School District,* supra, at p. 469.

And in *United States* v *Klein, Escheator of Commonwealth of Pennsylvania,* 106 F (2) 213, cert. den. 308 U.S. 618, it was held that the state of Pennsylvania may constitutionally escheat unclaimed money deposited in the registry of the United States District Court in Pennsylvania and later covered into the United States Treasury.

In *Anderson National Bank* v *Luckett,* 321 U.S. 233, 240, 151 A.L.R. 824, it was said:

"At common law, abandoned personal property was not subject of escheat, but was subject only to the right

of appropriation by the sovereign as bona vacantia. See 7 Holdsworth, A History of English Law (2d Ed.) 495, 496. Like rights of appropriation, except so far as limited by state law and the Fourteenth Amendment, exist in the several states of the United States. *Hamilton* v *Brown*, 161 U.S. 256; *Christianson* v *King County*, 239 U.S. 356; *Security Savings Bank* v *People of State of California*, 263 U.S. 282, 31 A.L.R. 391; *United States* v *Klein*, 303 U.S. 276."

There is nothing hypnotic in the maxim *mobilia sequuntur personam*. In *Blackstone* v *Miller*, 188 U.S. 189, 204, it was said:

> "When logic and the policy of a State conflict with a fiction due to historical tradition *(mobilia sequuntur personam)* the fiction must give way."

Petitioners of course are bound by the stipulation of facts (16) that decedent died in the City of Los Angeles, California, on July 25, 1943, leaving no will and no heirs, so far as is now known to the parties, and the Inventory (4) showing securities in the National Bank of Detroit, within the territorial jurisdiction of Michigan.

In the case of *Smith* v *Ajax Pipe Line Co.*, 87 F (2) 567, 570, cert. den. 300 U.S. 677, it was said:

> "But that legal principle *(mobilia sequuntur personam)* is not unassailable. It is a court made rule designed to work out practical justice (citations omitted.) Being such, it is pushed no further than the reason for its existence justifies and where justice requires a departure therefrom exceptions are made, both in other fields of law and in the field of taxation (citations omitted.)"

And in *Underwood*, et al v *Phillips Petroleum Co.* (CCA) 155 F (2) 372, 374, it is said:

> "The tendency of modern authority is to depart from the maxim of Roman law '*mobilia sequuntur personam*', recognized by the early decisions. That maxim, by which personal property was regarded as subject to the law of the owner's domicile, grew up in the Middle Ages when movable property consisted chiefly of gold and jewels easily carried by the owner from place to place, or secreted in spots known to him alone, and the result has, in modern times, due to the great increase in the amount and variety of personal property not immediately connected with the owner's person, yielded more and more to the lex rei sitae, the law of the place where the property is kept and used,
>
> *Pullman's Palace Car Co.* v *Pennsylvania*, 141 U.S. 18, 22;
>
> *Hutchison v Ross*, 262 N. Y. 381, 89 A.L.R. 1007;
>
> *First Trust Co. of St. Paul* v *Matheson*, 187 Minn. 468, 87 A.L.R. 478;
>
> *In re St. Paul & K. C. Grain Co.*, 89 Minn. 98."

We respectfully submit that the decision of the lower court, 317 Mich. 291, 304, to the effect:

> "It should be noted that when the escheat law was enacted the doctrine of situs of domicile was in existence in Michigan. We presume that it was the intention of the legislature by the enactment of the escheat law to overrule the doctrine of situs of domicile insofar as escheated estates are concerned. In our opinion the assets involved in the case at bar escheat to the State of Michigan under and by virtue of the Michigan escheat law,"

rests on adequate and independent state grounds, and this Court will not review judgments of state courts that rest on adequate and independent state grounds,

Herb v *Pitcairn*, 324 U.S. 117.

As said in *Freeman* v *Hewit*, 329 U.S. 249, 258:

> "Latin tags like *mobilia sequuntur personam* often do service for legal analysis, but they ought not to confound constitutional issues. What Mr. Justice Holmes said about that phrase is relevant here. 'It is a fiction, the historical origin of which is familiar to scholars, and it is this fiction that gives whatever meaning it has to the saying *mobilia sequuntur personam*. But being a fiction it is not allowed to obscure the facts, when the facts become important. *Blackstone* v *Miller*, 188 U.S. 189, 204.' "

This Court does not seek to review and revise the construction fixed upon a state statute as to a state matter by the court of last resort of the State,

Quong Ham Wah Co. v *Industrial Accident Commission*, 255 U.S. 445, 448.

And in speaking of the construction of state statutes by state courts this Court said in No. 461, October Term, 1946, *Greenough et al* v *Tax Assessors of the City of Newport*, et al., decided by this Court June 9, 1947, not yet officially reported:

> "State courts construe their statutes according to their understanding of state policy and apply them to such situations as their interpretation of the statutory language requires. In so adjudging, they are the final authority upon the meaning of their state law. It is only in circumstances where their judgments collide with

> rights secured by the Federal Constitution that we have power to protect or enforce the federal rights."

Can it be said here that petitioners have been denied rights secured by the Federal Constitution because the lower court concluded that the Legislature of Michigan had changed the common law doctrine of *mobilia sequuntur personam* with reference to the escheat of personal property found within the territorial limits of Michigan without disposition thereof by a last will and testament and without any known heirs? We think not.

And in *Supreme Lodge Knights of Pythias* v *Meyer*, 265 U.S. 30, 32, it is said:

> "Under the settled rule of this Court, declared so frequently and uniformly as to have become axiomatic, we must accept this decision of the highest court of the State fixing the meaning of the state legislation, as though such meaning had been specifically expressed therein."

We think that other principles established by this Court bar review here by this Court. It is well established that the Constitution of the United States does not guarantee uniformity of decision as to facts by the courts of two sovereign States,

> *Milwaukee Elec. Ry. & Lt. Co.* v *Wisconsin*, 252 U.S. 100, 106;
>
> *Tracy* v *Ginzberg*, 205 U.S. 170;
>
> *Central Land Co.* v *Laidley*, 159 U.S. 103.

The most that it does is to guarantee due process of law in arriving at such decision, and to that end this Court may re-examine the factual situation to ascertain whether the

conclusion of the state court had adequate evidence to support it,

Johnson Oil Co. v *Oklahoma*, 290 U.S. 158.

The right to escheat property certainly is in the same category, we think, as the right to succeed to ownership of realty and personalty which are peculiarly matters of state law,

Harris v *Zion's Savings Bank & Trust Co.*, 317 U.S. 447, 450.

It is firmly established that when parties have been fully heard in the regular course of judicial proceedings an erroneous decision of the state court does not deprive the unsuccessful party of his property without due process of law within the Fourteenth Amendment of the Constitution of the United States,

Bonner v *Gorman*, 213 U.S. 86, 91.

Neither the Fourteenth Amendment nor the full faith and credit clause require uniformity in the decisions of the courts of different states as to the place of domicile, where the exertion of state power is dependent on domicile,

Worcester County Trust Co. v *Riley*, 302 U.S. 292, 299;

Standard Oil Co. v *Missouri*, 224 U.S. 270.

The decision of a state court involving nothing more than the ownership of property, with all parties in interest before it, cannot be regarded by the unsuccessful party as a deprivation of property, without due process of law, simply because its effect is to deny his claim to own such property. The Fourteenth Amendment did not impair the authority of the States to determine finally, according to their settled

usages and established modes of procedure, such questions, when they do not involve any right secured by the Federal Constitution or by any valid act of Congress, or by any treaty,

Tracy v Ginzberg, 205 U.S. 170.

The basis of the non-federal ground rule, i.e., the refusal of the Court even to review for the purpose of deciding the federal question a judgment of a state court which rests upon an adequate state ground is a self-imposed limitation announced originally in *Murdock* v *City of Memphis*, 20 Wall. 590 at 635. The reason for this rule has rarely been articulated, but a recent decision of the Court, *Herb* v *Pitcairn*, 324 U.S. 117, 125, has sought to place it upon two considerations: first, " . . . in the partitioning of power between the state and federal judicial systems," and secondly, in "the limitations on our own jurisdiction."

As we have stated above that this Court has said that federal courts must follow the law of the state as to conflict of laws and the lower court declining to follow the case of *In re Lyons' Estate*, supra, dealing with a similar problem as here involved in the field of conflict of laws and relied upon by petitioners in the lower court for a reversal of the trial court judgment, and the lower court construing a state statute changing the common law rule of *mobilia sequuntur personam* with reference to the escheat of intangibles within the territorial limits of Michigan, no substantial federal question was raised either in the trial court or in the lower court and preserved there for review here as appears in reasons for appeal to the circuit court for the county of Wayne from the Probate Court for the County of Wayne, (19) and in Reasons and Grounds of Appeal on appeal to the Supreme Court of Michigan from the circuit court for the county of Wayne, Michigan. (38)

V

Conclusion.

The State of Michigan respectfully submits that the petition for certiorari should be denied; or, in the alternative, that the judgment of the Supreme Court of Michigan should be affirmed.

Respectfully submitted,

Eugene F. Black
Attorney General of Michigan

Edmund E. Shepherd
Solicitor General of the
State of Michigan

Daniel J. O'Hara
Assistant Attorney General of
the State of Michigan
Counsel for Respondents